UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

THE RED LAKE BAND OF CHIPPEWA INDIANS, on its own behalf and on behalf of its members; and GERALD F. BRUN and LUELLA R. BRUN,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 4-92 Civil 1147

DECLARATION OF MELISSA L. MEYER, Ph.D. (28 U.S.C. § 1746)

Melissa L. Meyer, declares as follows:

1. I am Melissa L. Meyer, Associate Professor of History, University of California, Los Angeles. My curriculum vitae is attached hereto as Attachment 1.

2. On or about May 25, 1994, I completed the "Declaration of Expert Historical Opinion Re: Red Lake Band of Chippewa v. United States, Cause No. 4-92 Civil 1147" (Attachment 2 hereto) and hereby declare it to be my expert opinion in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on May 27, 1994, at 12:30 PM EST

/s/ Melissa L. Meyer
Melissa L. Meyer

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Declaration of Expert Historical Opinion Re:

Red Lake Band of Chippewa v. United States,
Cause No. 4-92 Civil 1147

The central issue of this case is whether "the income...Tribal members derived from their harvest of timber from Tribal lands is subject to federal income tax."[5] Plaintiffs cite "three treaties between the United States and the Red Lake Band that allegedly create an exemption from federal taxation: the Treaty of Greenville, the Treaty of Old Crossing, and the Supplement to Treaty of Old Crossing.[6] It has become an accepted axiom of federal Indian law that Indians' understandings of treaty terms are to be given priority in adjudicating claims. Given this, what understandings did the Red Lake Band have of the three treaties mentioned above? Reconstructing "understandings" of people who left few written records of their own is difficult; the passage of time complicates matters further. Nonetheless, some informed statements can be made based on current knowledge of native land use and resource allocation techniques in the past.

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[5] Red Lake Band of Chippewa Indians et al. v. United States of America, et al., Memorandum in Support of United States of America's Motion for Summary Judgment, Case No. 4-92 Civil 1147, In the United States District Court for the District of Minnesota, Fourth Division: 3.

[6] Ibid.: 4.

The 1795 Treaty of Greenville

First, from all indications, the Red Lake Band was not party to the Treaty of Greenville. The "Chippewa" were not a homogeneous, corporate group historically, nor are they today. Place names mentioned in the Treaty of Greenville ("Michillimackinac" (sic), "the strait between lakes Huron and Michigan," and "the island De Bois Blanc, being an extra and voluntary gift of the Chipewa (sic) nation"[7]) indicate bands of "Chippewa" located further to the east in the northern area of Lake Michigan. None of the Indian leaders whose names appear among the list of signatories is identified as a Red Lake Band member. Historical documentation suggests that the Red Lake Band, though having an established political structure and leadership prior to the earliest treaties, was involved in fur trade relationships more to the interior of Minnesota and the Red River Valley west of the Great Lakes and remained isolated from "official" involvement with the United States and its representatives until the 1820s.[8]

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[7] Treaty of August 3, 1795 (hereafter Treaty of Greenville) 7 Stat. 49, reprinted in Charles Kappler, comp. and ed. Indian Treaties 1778-1883 (Mattituck, NY: Amereon House, 1972, reprint of Indian Affairs: Laws and Treaties, vol. 2 Treaties[Washington, D.C.: U.S. Government Printing Office, 1904): 40.

[8] J. C. Beltrami, A pilgrimage in Europe and America, leading to the discovery of the sources of the Mississippi and Bloody river with a description of the whole course of the former, and of the Ohio (London: 1828); Lawrence J. Burpee, ed. Journals and Letters of Pierre Gaultier de Varennes de la Verendrye and his Sons (Toronto: The Champlain society, 1927); Charles Jean Baptiste Chaboillez, Journal of Charles Chaboillez, 1797-1798 (Masson Collections, No. 1, M.G. 19. c.l, Public Archives of Canada); Elliot Coues, ea., New Light on the Early History of the Greater Northwest, The Manuscript Journals of Alexander Henry, fur trader of the Northwest Company, and of David Thompson, official geographer and

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explorer of the same company. 1799-1814. Exploration and Adventure among the Indians on the Red

Saskatchewan, Missouri and Columbia River, 3 vols (New York: 1897); William H. Keating, Narrative of an Expedition to the Source of St. Peter's River, Lake Winnepeek Lake of the Woods etc., etc., Performed in the year 1823 by order of the Hon. J. C. Calhoun, Secretary of War, under the command of Stephen H. Lona, Maior U. S. T. E., 2 vols. (Philadelphia: 1824); Meriwether Lewis and William Clark, Travels in the Interior parts of America; communicating discoveries made in exploring the Missouri, Red River and Washita by Captains Lewis and Clark; Doctor Sibley and Mr. Dunbar; with a Statistical Account of the Countries Adjacent. As laid before the Senate by the President of the United States, February 1896 (London: 1807); Alexander Mackenzie, Voyages from Montreal on the river St. Lawrence, through the Continent of North America to the frozen and Pacific oceans; in the years 1789 and 1793...Preliminary account...of the fur trade of that country (London: 1901); Zebulon M. Pike, The Expeditions to the headwaters of the Mississippi River, during the years 1805-6-7 (Philadelphia: 1810); Henry Schoolcraft, Discovery of the Sources of the Mississippi or Narrative of an Expedition through the Upper Mississippi to Itasca Lake, the actual source of this River; embracing an exploratory trip through the St. Croix and Burntwood (or Brule) Rivers; in 1832 (New York: 1834); Henry Schoolcraft, Historical Table showing the number and location of the different Bands of Indians comprised within the agency of Sault Ste. Marie, Michigan Territory, 1824 (Field Records, Letters Sent at Michigan Superintendency, Vol. A., Records of the Bureau of Indian Affairs, National Archives); Henry Schoolcraft, Information respecting the History, Condition and Prospects of the Indian Tribes of the United States: collected and prepared under the direction of the Bureau of Indian Affairs.... Vols. I-VI (Philadelphia: 1853-1857); J. B. Tyrrell, ea., David Thompson's Narrative of His Explorations in Western America. (Toronto: The Champlain Society, 1916); Erminie Wheeler Voegelin and Harold Hickerson, Chippewa Indians I: The Red Lake and

Therefore, Red Lake Band members themselves were probably unaware of the Treaty of Greenville in 1795; they would have had no "understandings" of it.

Pembina Chippewa (New York: Garland Publishing Inc., 1974).

Terms of the Treaty of Greenville do, however, have bearing for the Red Lake Band. In return for peaceful relationships and considerable land cessions on the part of Indian groups party to the treaty, the United States, "as the great means of rendering this peace strong and perpetual," relinquished its claims "to all other Indian lands northward of the river Ohio, eastward of the Mississippi, and westward and southward of the Great Lakes and the waters uniting them."[9] The current Red Lake Reservation lies within this geographic area. Treaty language went on to clarify that "relinquishment" meant that Indians living within the lands had the right "quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States."[10] The year was 1795. Such language acknowledged the fact of complete American Indian sovereignty, including their long established practice of autonomous decision-making in regard to all matters of concern to them. Governing resource husbandry and allocation were central areas of concern especially to people who "owned" land and resources communally and approached economic decisions with the collective group's wellbeing in mind. Though Red Lake Band leaders were not directly involved in Treaty of Greenville negotiations, subsequent efforts to safeguard Red Lake interests and pursue various claims against the United States government have educated later generations of Red Lake leaders about the importance of the Treaty of Greenville's terms for them. It is fair to say that none of the Indian leaders mentioned, those party to the treaty, those covered by it, or those educated as to its importance for them,

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9 Treaty of Greenville: 41. Ibid.: 42.

10 Ibid.: 42.

imagined that a recognition of complete and total Indian sovereignty would somehow be construed as bestowing a right to the United States government to tax the income of Tribal members derived from their harvest of Tribal resources. It is analogous to the United States demanding the right to tax French citizens who were allowed to harvest timber from French public lands.

Usufruct Allocation Rights and the Red Lake Band

Admiringly pronouncing that American Indian groups held land in common has become a cliche -- a celebration of a romanticized stereotype and an indictment of capitalist systems all at once. Such statements do little to explain just how collective landholding systems operated. Such insight is critical to understanding how Red Lake Band members governed land and resource use and how they would have construed the terms of various treaties.

Usufruct rights or use rights governed resource allocation among most American Indian groups. No one individual "owned" any particular resource, but an individual or family group might claim the right to use a certain resource on a regular or annual basis. Usufruct rights included the responsibility of husbanding resources: determining when a field should lay fallow; deciding how much wild rice should be harvested and reseeded; clearing away undesirable plants that impeded growth of the desired plant;

making sure not to deplete the breeding stock in a certain fishing area, etc. Nearly all resources could be husbanded and allocated in this way, from animal habitat to stands of maple trees ("sugarbush") to fisheries to wild rice fields. Band members tacitly respected each other's usufruct rights; no centralized authority existed capable of coercing adherence to usufruct principles. But the threat of social ostracism far outweighed any benefits to be gained from intruding on another's use rights.

Usufruct systems of land and resource allocation were of greater longevity and duration among more sedentary groups. Families might return to the same "sugarbush" or wild rice field year after year, storing necessary utensils at the site in birchbark shelters in anticipation of their annual return. Among more mobile groups usufruct decisions had to be based more on immediate than long-term use.

By the early nineteenth century, Red Lake Band members had become accustomed to village life. Bands usually consisted of a married couple in the prime of life, plus related kin, broadly defined: siblings (the Chippewa reckoned that first cousins were siblings), children (those of siblings as well) and their families, elderly parents or grandparents, aunts and uncles, and friends and associates who were close enough to be considered fictive kin. Bands typically had a stable core of households with more peripheral relatives who drifted in and out. Each household was a smaller agnatic extended family.

Red Lake villagers made political decisions democratically, usually by the participants involved in major undertakings like hunting, making maple sugar, or harvesting wild rice. Commonly, village councils convened and deliberated matters of importance to all, such as making alliances, going to war, or negotiating with various Euroamerican agents. Even in this more formal context, no one exercised coercive control. By the nineteenth century, leadership roles might be determined in several ways. Some chiefs or oqimaaa in the Chippewa language, acquired their status through hereditary channels; being born into a prominent family or having a highly respected leader for a parent enhanced a talented child's chances of following in their footsteps. Women of the lineage could also assume positions of leadership and were usually referred to as "queens" or ocimaakwe; they could serve as proxies for absent male relatives or gain respect for their own capabilities. Civil leaders achieved their status through their suasive skills as orators or negotiators and led decision making in civil affairs. A loose form of age-grading characterized Chippewa politics and civil leaders tended to be older men, the "gray-heads," who let wisdom, patience, and level-headedness guide their actions. Conversely, warriors or war leaders typically were "younger men" or "hot heads," who were the first to defend and quick to seek revenge and pillage. Civil leaders generally acted as spokesmen and then warriors lent their support. Some men evolved from warriors to civil leaders as experience tempered their enthusiasm for war and family life heightened their appreciation of peace.

The Red Lake Band was reported as sedentary and farming by 1851[11]; it is safe to assume that they had done so for some time prior. Each village was economically and politically autonomous; there was no overarching Chippewa "tribe" or "nation," though villages shared cultural and linguistic traits and were cross-cut by affinal ties and exogamous, totemic clans. Clan members could expect aid and hospitality from totemic relatives on an intervillage basis. Village members shared interests in common territories and resources, decided upon civil and military leaders and lent them their support, united against common enemies, negotiated together with external Euroamerican agents, and gathered together for religious rituals. Villages were seats of sedentary pursuits where important economic activities were carried out. Task actors, predominantly women, regulated usufruct rights over fishing areas, wild rice fields, stands of maple and birch trees, and farming areas. Each family that so desired received rights to gather resources from certain areas to ensure equitable access and adequate resource husbandry. War parties and hunting parties were recruited from villages and returned there when they accomplished their objectives.

Hunting bands, recruited from villages, left the settled villages, most often in winter, to hunt and trap in contested areas closer to the Dakota (Eastern Sioux). Groups were "small enough to subsist by hunting and gathering but large enough to furnish

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[11] J. W. Bond, Minnesota and Its Resources (Chicago, 1856): 29394; Wheeler-Voegelin and Hickerson, The Red Lake and Pembina Chippewa: 123.

protection against hostile war parties and raids." Hunters cooperated to achieve greater efficiency; communal deer drives, deer impoundment, torch-light hunting, and joint bison hunts all ensured better results. Band leaders allocated particular areas for individuals or small groups to use on an ad hoc basis. A variety of factors related to the habits of each animal species determined allocation patterns. The considerations involved in allocating beaver grounds where traplines could be used differed from strategies for most effectively hunting deer. In all cases, decisions were based on immediate, seasonal grounds, not on repeated use.

A regularly patterned round of seasonal harvesting activities integrated the functions of the villages and hunting bands and amply supplied subsistence needs except for brief periods of deprivation in late winter.

When the lakes froze, small groups of bilateral kin, the hunting bands, left for game areas. They traveled light and made a winter camp. People cooked communally over a central fire around which wigwams were arranged. Each wigwam also had a central fire over which large racks for drying meat rested.

Men then made shorter trips to hunt game that contributed to their subsistence during the rest of the year. Women helped retrieve the kill and processed and allocated it among relatives. Women tanned the hides and furs that served as bedding and clothing and those intended for trade with Euroamericans. During this period men sometimes left for more distant hunting areas and stayed away for weeks at a time.

With the coming of spring, people left the winter camps, returned to the main villages, and immediately prepared to journey to the sugar bush. Sugaring leaders, usually women, allocated usufruct rights or rights of usage to a certain stand of maple trees to each household to which it returned annually. Birchbark and metal utensils were stored in a small lodge for future use in the annual sugaring process. During the year, people cached a store of food supplies nearby for use in the spring. The sugar camp soon became a bustle of activity. Women vigilantly kept the sap kettle boiling day and night until the think syrup became granulated. They stored the sugar in birchbark cones and the upper mandibles of ducks' bills.

During this time, some men fished with seines, hooks, traps, and spears. Fish served as an especially important food resource in the spring, but women exploited fish throughout the year, generally using nets that they constructed of nettle-stalk fiber and later of traders' twine. Fishing weirs were used. Red Lake fisheries were especially important focal points. By all of these means, Red Lakers netted many fish which they both ate at once and cut into thin slices and dried for future consumption.

After sugaring, families again returned to the villages to farm. Each family located its summer bark wigwam along the lake shore where it tended its own fields. Men broke additional ground every year to enlarge the garden, where women cultivated corn, squash, and pumpkins. Their annual harvest of produce could be

quite large.

Spring and summer signaled the onset of a series of gathering activities. Berries of all sorts -- blueberries, chokecherries, gooseberries, cranberries, and raspberries -- were dried and ground for storage. Roots were gathered in the spring; basswood and birchbark in the summer. Herbal specialists selected medicinal plants in August once they had fully developed and most had blossomed.

At the close of summer, people turned to harvest the highly nutritious wild rice that provided a significant proportion of their subsistence. Large groups gathered at the rice camps for the last time before bands dispersed for the winter. Ricing leaders, usually women, allocated a section of the rice field to each household to harvest, and everyone shared a tacit respect for these usufruct rights. Women went to the fields earlier in the summer to demarcate their area by tying some rice in sheaves and staking boundaries to show that they intended to harvest their area that year. When the rice ripened the harvest could begin in earnest. Rice was knocked into canoes and then processed on the shore. The Chippewa gathered successive harvests, accumulating great quantities of rice to last through the winter and beyond. Even so, they took only a portion of the total yield, encased some kernels in mud, and tossed them back into the water to ensure next year's crop.

After the wild rice harvest, each family group returned to its summer camp to harvest their farming produce. By this time, many men had departed for their fall hunts, leaving women and

children to tend to the harvest. Once this was completed, women turned to fishing until the men returned and they all left for the winter camps.[12]

Although movement from one place to another characterized the overall seasonal pattern, stability in the timing and locations gave the annual cycle great continuity. The diverse resource base provided a hedge against failure of any one resource. Taken as a whole, this subsistence strategy particularly suited the north country of Minnesota. It had endured through generations and the Chippewa adapted it to the demands of the Euroamerican fur trade and to the later reservation era.

The advent of the Euroamerican trade in furs and hides gradually transformed hunting from a subsistence activity to a commercial one. As native craft traditions were increasingly replaced by items of Euroamerican manufacture, Indians became dependent on trade goods that could only be obtained by exchanging furs and hides. Both the technology associated with the hunt and

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[12] The foregoing description of the typical nineteenth century Chippewa seasonal round rests on many sources. They are: Harold Hickerson, The Southwestern Chippewa: An Ethnohistorical Study, American Anthropological Association, Memoir 92 (Menasha, Wisc: American Anthropological Association, 1962); Harold Hickerson, The Chippewa and Their Neighbors: A Study in Ethnohistory (New York: Holt, Rinehart, and Winston, 1970); James G. E. Smith, Leadership among the Southwestern Olibwa, National Museums of Canada, Publications in Ethnology 7 (Ottawa: National Museums of Canada, 1973); Frances Densmore, Chippewa Customs, Bureau of American Ethnology, Bulletin 86 (Washington, D.C.: U.S. Government Printing Office, 1929); Frances Densmore, How Indians Use Wild Plants for Food, Medicine and Crafts (New York: Dover Publications, 1974); Priscilla K. Buffalohead, "Farmers, Warriors, Traders: A Fresh Look at Ojibway Women," Minnesota History 48 (1983): 236-44.

the time devoted to it intensified. This transformation did not happen overnight. Indeed, earliest exchanges involved manufactured items that had direct counterparts in Indian cultures. Only over time did Euroamerican traders succeed in introducing items that persuaded Indians to bring in ever more furs to trade. Despite the fact that most pre-contact Indian trade centered on ceremonial and political concerns rather than striking the best bargain, Indians eventually came to understand market terms.

Fur traders who established posts in the western Great Lakes region faced long, unreliable supply lines, which prompted them to turn to their native trading partners for subsistence resources. Game, fish, wild rice, maple sugar, and other seasonal produce became marketable commodities in addition to furs and hides. This development created more opportunities for both women and men to barter products of their labor for Euroamerican manufactured goods that made the basic tasks of their lives easier.[13]

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[13] George Quimby, Indian Culture and European Trade Goods (Madison: University of Wisconsin Press, 1966); Lewis Saum, The Fur Trader and the Indian (Seattle: University of Washington Press, 1965); Marshall Sahlins, Stone Age Economics (Chicago: Aldine, 1972); Arthur J. Ray and Donald Freeman, Give Us Good Measure: An Economic Analysis of Relations between the Indians and the Hudson's Bay Company before 1763 (Toronto: University of Toronto Press, 1978); George Dalton, "The Impact of Colonization on Aboriginal Economics in Stateless Societies," Research in Economic Anthropology 1 (1978): 113-84; Christopher L. Miller and George R. Hamell, "A New Perspective on Indian-White Contact: Cultural Symbols and Colonial Trade," Journal of American History 73 (1986): 311-28; Stephen Gudeman, "Anthropological Economics: The Question of Distribution," Annual Review of Anthropology 7 (1978): 347-77; Charles Cleland, "The Inland Shore Fishery of the Northern Great Lakes: Its Development and Importance in Prehistory," American Antiquity 47 (1982): 761-84; Carolyn Gilmore, Where Two Worlds Meet: The Great Lakes Fur Trade (St. Paul:

As the nineteenth century progressed, the Red Lake Chippewa continued to market produce from their seasonal round of harvesting activities. They also responded to new incentives offered by the developing market economy that accompanied increased Euroamerican settlement in the region. Snake root and ginseng were valued by American pharmacists; Indians had only to dig and sell it. Local whites bought birchbark baskets and other items of native manufacture. And Red Lake Indians found a market for timber and hay. The sale of all of these products easily integrated into the seasonal round. Harvesting them was governed by the same sort of usufruct allocation system that had been in place for generations. Marketing these new products can be seen as a creative adaptation by the Red Lake Band to the developing market economy that simultaneously enabled them to retain their sovereign, autonomous political system and collectively regulated subsistence system. Red Lake leaders made clear, conscious decisions to ensure that this would occur.

The 1863 Old Crossing Treaty & its 1864 Supplement

Alexander Ramsey was very clear about his intentions in negotiating the 1863 Old Crossing Treaty with the Red Lake Band and Pembina Chippewa. He stated his most important concern in the first sentence of the treaty journal that he kept and forwarded to his superiors. "Having, in compliance with your instructions, succeeded in effecting a treaty...for the extinction of

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Minnesota Historical Society Press, 1982).

their title to the large and important district of country known as the Red River Valley...."[14] He had other concerns as well: he wanted to unite the Red Lake and Pembina bands; he wanted only "chiefs and principal men" to attend; he wanted to pay an amount equal to what the Pillager band of Chippewa had received a few years before; and he wanted to accomplish all of this with utmost haste before winter set in.

He represented all but the most important of his objectives to the Indians in a straightforward fashion. In his journal he candidly admitted to deceiving the Indians of his real intent. He told them, "Their Great Father has no especial desire to get possession of their lands."[15] All he wanted was a right of way for unmolested travel on their roads and streams. He would entertain a cession of land only if the Indians so desired. This subterfuge obviously contrasts with his earlier profession that, "The position of the ceded tract, embracing all the routes of travel, commerce, and emigration between the Mississippi valley and the prosperous British colonies of northwestern America, renders the extinction of the Indian title thereto a matter of the first consequence to the people of this State, and essential, indeed, to the development of the northwest."[16] He misled them to prevent them from asking for an extravagant settlement.

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[14] Articles of a Treaty made and concluded at the Old Crossing of Red Lake River, October 2, 1863, 38th Congress, 1st Session, Executive, Treaty File, National Archives: 6.

[15] Ibid.: 16.

[16] Ibid.: 11.

To illustrate what a generous deal he thought the assembled Indians were receiving, Ramsey repeatedly described the area to be ceded as worthless to all. He told the Indians that they were poor and that white people could make the worthless lands at least a thousand times more productive and take care of all their needs. Indeed, God had ordained it; he did not know why, but was powerless to stop it: "For some wise reason which we cannot comprehend, the Great Spirit is pressing these white people all over the country."[17]

Not surprisingly, Red Lake leaders were not buying it. Little Rock countered, "You told us they (the lands) were not of much importance to us. The Master of Life gave us the river and the water thereof to drink, and the woods and the roads we depend on for subsistence, and you are mistaken if you think we derive no benefits from them. The Master of Life gave it to us for an inheritance, and gave us the animals for food and clothing."[18] No one ever acceded to Ramsey's assertions that the land had no value for them; repeatedly, they argued the opposite. Indeed, they clearly understood that unauthorized travel and trade by whites along the rivers had driven the game away and directly affected their livelihood. They emphasized all the resources supported on the land and how central they were to their economic well-being. This is directly in keeping with their seasonal round and their

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[17] Ibid.: 25.

[18] Ibid.: 18.

system of usufruct resource allocation which was still firmly intact.

When most native leaders showed reluctance to cede land without a great deal more money than the Pillagers had received, Ramsey resorted to other strategies. He continually held the fate of the Sioux who had attacked American settlers the year before up to them. In retribution, the Sioux had been driven from their homes, hundreds were still being held in prison, and 36 had been publicly hung. Despite protests from Chippewa leaders at the treaty negotiations that they had not robbed traders along the Red River a few years earlier, Ramsey demanded compensation. Red Lake Band members resented being held accountable by the United States, but also feared military reprisal. They insisted that American law, with its "bad trees (meaning the gallows)" and "dark hole in the ground, with a lock to lock us in (a dungeon),"[19] not be extended into their territory, a manifestation of their steadfast commitment to their sovereignty and their fear of meeting the same fate as the Sioux. Discerning their fear, Ramsey used it to his own ends. He insisted that they had to make a treaty or suffer the consequences of American law, complete with "bad trees" and "dark holes." He literally told them, as reported in his treaty journal, that they had to make a treaty to preserve their sovereignty and autonomy.

Ramsey made veiled assurances along these lines. The Treaty itself mentions that the Red Lake Band retained lands around Upper and Lower Red Lakes. The Treaty journal actually

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[19] Ibid.: 29.

uses the word "reservation,"[20] which has important implications in federal Indian law. Ramsey also promised on several occasions that they should retain the right to hunt on the ceded lands, but always with some sort of vague time limits ("It would not probably be wanted for settlement before the youngest man among them was a gray-headed old man"[21]).

Finally, Ramsey threatened that it was the last chance the Indians had to make a treaty. He intimated that Americans were so upset with the Sioux that they were of a mind to ignore Indian title completely and just take the lands they wanted. So much for the argument that Ramsey desired only a right-of-way (which American citizens had already taken, after all). A good deal of duplicity and manipulation characterized the negotiations for the 1863 Old Crossing Treaty.

It is unclear why the Red Lake Band finally agreed to the treaty after objecting to it up until the final day. Ramsey reported that Moose Dung, the most important leader, finally spoke in favor of it and that all the other "chiefs" except for one fell in line. Reportedly, though he was not satisfied with the terms, Moose Dung emphasized that he was a man who followed through on things and did not want the commissioners to go away disappointed. Did Moose Dung have a genuine change of heart, or were Ramseys machinations and veiled threats successful? The treaty journal does not tell us.

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[20] Ibid.: 25.

[21] Ibid.: 20.

The 1863 Old Crossing Treaty and its 1864 supplement continued the tradition of Red Lake sovereignty and autonomy. They ceded land to the United States for which they were to receive money, goods, and services. The retained all lands not specifically ceded.[22] But nothing in the language of the treaty required them to alter their political or economic practices. The years 1863 and 1864 pre-dated the later efforts of the United States government to allot reservation lands to individuals in privately owned plots. These years pre-dated later intrusive, indeed coercive, U.S. policies aimed at the forced assimilation of Indian people by banning their religious practices and forcing them to send their children to far-off boarding schools. In 1863 and 1864 the Red Lake Band, in their understanding, remained sovereign and autonomous. They were not "domestic dependent nations" in their mind. The word "non-competent" had not yet entered the lexicon of U.S. Indian policy.

Undoubtedly, U.S. treaty negotiators for both the 1863 and 1864 treaties and the earlier aborted 1851 treaty imagined that further land cessions would follow. The Red River Valley was becoming increasingly attractive to Euroamerican settlers, especially as the expansion of railroads advanced. They hoped to consolidate the Red Lake Band and the Pembina Band, and eventually all Chippewa bands in Minnesota, rather than treat

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[22] Kappler, Indian Affairs, Vol. 2: 853, 861; Charles C. Royce, comp., Indian Land Cessions in the United States, 18th Annual Report of the Bureau of American Ethnology, 1896-97, Part 2 (Washington, D.C.: U.S. Government Printing Office, 1899): 828.

with each of them as independent entities. They also hoped that the goods and services provided for by the treaties, as well as the parcels of land offered to people of mixed descent, would encourage them to "adopt the habits and pursuits of civilized life."[23] But the important point to emphasize here is that NOTHING REQUIRED THE RED LAKE BAND TO DO SO AND THEY CERTAINLY WOULD NOT HAVE AGREED TO DO SO.

The Highly Successful Struggle of the Red Lake Band to Maintain Political and Economic Sovereignty & Autonomy

The Red Lake Band has a unique history directly pertinent to the issues involved in this court case that go beyond the specific treaties cited. To illustrate my argument here, I am going to quote extensively, and uninterruptedly from one of my own publications, "The Red Lake Ojibwe," Chapter 16 in The Patterned Peatlands of Minnesota, H.E. Wright, Jr., Barbara A. Coffin, and Norman E. Aaseng, eds. (Minneapolis: University of Minnesota Press, 1992): 253-56

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[23] 1863 Old Crossing Treaty, Kappler, Vol. 2: 854. See also, Wheeler-Voegelin and Hickerson, The Red Lake and Pembina Chippewa, especially section "H. 1843-1863 The Treaty Period" where they quote and otherwise make extensive reference to unpublished treaty journals kept by treaty commissioners. They cite these treaty journals as being housed in a "Treaty File" at the National Archives. They were unavailable to me at the time of this writing.

"In the face of mounting pressure from outsiders to gain access to their resources, the Red Lake Ojibwe articulated a defense of their reservation as an ecosystem in which they were human participants. The Red Lake Reservation was established by treaty in 1863.... Through the 1889 Nelson Act, the Red Lake band ceded a large acreage to the north and west, much of it peatland, in return for an established reservation. Red Lake leaders hoped that the provision of the Nelson Act establishing definite reservation boundaries would ultimately protect their claim to the lands surrounding Upper and Lower Red Lakes.[24]

Between 1887 and 1934, the U.S. government embarked on an experiment in social engineering designed to eradicate Indian cultures nationwide and replace them with a romantic version of the American agrarian ideal, the small-scale yeoman farmer. This policy emphasized allotment of the reservation land bases to individuals to farm. Policymakers aimed to sever tribal communal bonds and to instill in Indian people an appreciation of private property that would enable them to become full participants in the market economy. They hoped that education and Christianization would hasten this transformation. Federal officials envisioned that Indians and their cultures would meld into the dominant society, retaining little of their heritage. The 1889 Nelson Act was to achieve this goal among the Minnesota Ojibwe people.[25]

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[24] Congressional Serial Set 2747.

[25] U. S. Statutes at Large 24 : 388-391, 25: 642-646 ; Leonard Carlson, Indians, Bureaucrats and Land: The Dawes Act and the Decline of Indian Farming (Westport, CT: Greenwood Press, 1981); Henry E. Fritz, The Movement for Indian Assimilation, 1860-1890 (Philadelphia: University of Pennsylvania Press, 1963); Frederick E. Hoxie, A Final Promise: The Campaign to Assimilate the Indians 1880-1920 (Lincoln: University of Nebraska Press, 1984); Robert W. Mardock, The Reformers and the American Indian (Columbia: University of Missouri Press, 1971); Melissa L. Meyer, "'We Can Not Get a Living as We Used To": Dispossession and the White Earth Anishinaabeg, 1889-1920," The American

Red Lake band leaders selectively supported the Nelson Act negotiations. While they participated in an initial land cession, they adamantly refused to consider allotting the reservation land to individuals, selling the remainder, or allowing the proceeds to be deposited in a central fund to which all of the "Chippewa in Minnesota" shared a right. Leaders insisted on continuing to hold their land in common. They dismissed allotment provisions as a thinly veiled attempt to dispossess them of their lands and undermine their tribal relations. They would continue to maintain their opposition to these measures for the next hundred years, and they show no sign of reconsidering their stance today.[26]

Steadfast maintenance of their independent, collective rights formed the central facet of the Red Lake band's political ideology. The high proportion of swampland and forested land on the reservation aided them in resisting the proposed allotments. While the Ojibwe had many uses for swampland, policymakers

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Historical Review 96 (1991): 368-394; Melissa L. Meyer, The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889-1920 (Lincoln: University of Nebraska Press, 1994); Delos S. Otis, The Dawes Act and the Allotment of Indian Lands, F. P. Prucha, ed. (Norman: University of Oklahoma Press, 1973); Francis P. Prucha, American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900 (Norman: University of Oklahoma Press, 1976); Francis P. Prucha, The Great Father: The United States Government and the American Indians (Lincoln: University of Nebraska Press, 1984).

[26] Congressional Serial Set 2747. 22

intended that all Indians should instead become market-oriented farmers. U.S. legislators saw timber at Red Lake as a marketable resource that would provide the necessary funding to fuel their assimilation programs. Allotting swampland and timberland to individuals would do little to enhance farming skills among the Red Lake Indians, so the nature of the land and the resistance of the Red Lake band continued to forestall allotment of the reservation land.

Fully aware of the threat posed by the Nelson Act, Red Lake leaders sought additional safeguards at the first opportunity. When government representatives showed interest in acquiring another land cession from the Red Lake band, Indian leaders attempted to manipulate the situation for their own ends. They remained adamant in their opposition to allotment of their land when Indian Office inspector James McLaughlin arrived to negotiate. Their leaders indicated, however, that they might be willing to agree to another land cession if they received legislative guarantees permitting them to retain communal ownership of their unallotted land base. McLaughlin agreed, and in 1904 the Red Lake Band secured the legislation on which their legal rights to what became known as the Red Lake Diminished Reservation are based. Government officials still hoped that the Red Lake band would eventually accept allotment of land, but the Red Lakers had reason to feel even more secure in their land tenure arrangements.[27]

The chain of events that occurred at the White Earth

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[27] Congressional Hearings 1920.

Reservation demonstrated to Red Lake leaders how individual land rights could undermine tribal relations and threaten the very economic base of the reservation. Ojibwe leaders, many of them market-oriented entrepreneurs of mixed descent from White Earth, formed the General Council of the Chippewa in 1913 in response to mismanagement of their tribal resources by the U.S. government. Because the 1889 Nelson Act had created the Chippewa in Minnesota Fund as the depository for the proceeds of all land and timber sales on Ojibwe-ceded lands, exercising any control over the administration of these funds required the participation of all of the Ojibwe reservations in Minnesota. Initially, the Red Lake band joined the General Council of the Chippewa to secure control over their common tribal funds from the federal government.[28]

In 1918, entrepreneurs of mixed descent from the White Earth Reservation attempted to use the General Council to divide the proceeds of all Ojibwe assets and distribute them among enrolled tribal members. As part of this plan, council leaders, very few of them from Red Lake, sought to have the Red Lake Diminished Reservation allotted and the surplus sold in accordance with the 1889 Nelson Act. The money from these land sales would contribute to the Chippewa in Minnesota Fund and would enrich the rest of the Ojibwe at the expense of the Red Lake band. Red Lake leaders severed ties with the General Council of the Chippewa and formed their own independent

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[28] Melissa L. Meyer, "Warehousers and Sharks: Chippewa Leadership and Political Factionalism on the White Earth Reservation, 1907-1920," Journal of the West 23 (1984): 32-46; Meyer, "We Can Not Get a Living..."; Meyer, The White Earth Tragedy....

General Council of the Red Lake Band to safeguard their interests.[29]

As part of their move toward independent status, Red Lake band leaders cast their loyalties with the Indian Office to guard against fulfillment of the terms of the Nelson Act. They consistently referred to the 1904 McLaughlin Agreement, which established their separate reservation property rights, as the legal basis of their claims.[30]

After 1918, in the midst of this crisis period, Red Lake leaders structured their independent council so that individualistic entrepreneurs could not easily gain control. They vested decision-making power in seven chiefs who, in turn, appointed five council members each. In the long run, such a structure would produce a tightly knit group, probably related by kinship, whose members shared a similar conservative outlook on reservation policy and cultural adaptation. This organizational structure provided for continuity and a degree of ethical exclusivity by adapting the traditional political band structure to allow for the concentration of power in the hands of these seven Chiefs.[31]

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[29] Bureau of Indian Affairs, White Earth Central Classified Files (BIA/WECCF) 054, 056; Bureau of Indian Affairs, Red Lake Central Classified Files (BIA/RLCCF) 054, 056; Congressional Serial Set 8838, 10085, 10229.

[30] BIA/RLCCF 054

[31] BIA/RLCCF 054, 056; Erwin F. Mittelholtz, Historical Review of the Red Lake Indian Reservation, Redlake, Minnesota: A History of Its People and Progress, Beltrami County Historical Society Collections No. 2 (1957).

"Founders of the Red Lake council defended their right to determine the structure of reservation government by arguing that their tribal relations had never been severed by allotment of the reservation land base. In essence, they were using the terms of U.S. policy to preserve their own interests. They recognized that their separate, independent status made them unique among the Minnesota Ojibwe. Leaders argued that their successful perseverance through the harshest of the U.S. government's assimilation campaign entitled them to retain their council of chiefs as the governing body on the reservation.[32]

The General Council of the Red Lake Band maintained its separate status in the face of the 1934 Indian Reorganization Act. Under authority of this act, leaders of the other Ojibwe reservations in Minnesota agreed to incorporate as the Minnesota Chippewa Tribe. After much deliberation and concern for their separate tribal assets, Red Lake leaders decided not to cooperate with the elective governmental structure of the Minnesota Chippewa Tribe, which would have jurisdiction over all the reservations. Fearing that restrictions on their political autonomy might follow any relationship with the Minnesota Chippewa Tribe, the Red Lake band refused to cooperate even on a temporary basis.[33]

The entire governmental structure at Red Lake had evolved to protect land and resources from both external and internal threats.

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[32] BIA/RLCCF 054, 056; congressional Serial Set 8838, 10085, 10229.

[33] BIA/RLCCF 054, 056; U. S. Statutes at Large 48: 984; Congressional Serial Set 10085, 10229.

Today the Red Lake Reservation retains the only contiguous, unallotted reservation in Minnesota, and the band's accomplishment in retaining their land base is exceptional among Indian reservations nationwide. Only a few tribal groups have been able to retain a significant proportion of their land bases; the majority today possess only fragments of their original reservation holdings. The Red Lake band tenaciously persevered in retaining its landed reserve in all its diversity -- peatlands, forest lands, prairie, lakes, and streams -- understanding full well its importance to the survival of their culture."

The Red Lake Economy Today

Fish and other natural resources still serve as the basis for all of the nongovernmental employment on the Red Lake Reservation today. The components of the self-supporting element of the reservation economy remain the same as they have for generations -perhaps even centuries; only the techniques for managing and harvesting the resources have intensified. In a very real sense, the cultural and economic heritage of the Red Lake Ojibwe, one that very likely resembles the customs of all prior native inhabitants of the area, has carried them through the decades and continues to sustain them today.

The Red Lake Reservation economy still relies heavily on four of the natural resources upon which the people have relied

for generations: 1) fish, 2) timber, 3) wild rice, and 4) game.

Red Lake Band members have been commercial fishers for over 70 years. Initially they made the transition from a subsistence economy simply by selling part of their harvest to traders or local merchants, allowing households to participate in the cash economy, if only peripherally. By 1929, the Red Lake Band organized the Red Lake Fisheries Association, which processed walleye, perch and six other species. The Red Lake fishery remains the major source of employment on the reservation today, generating two-thirds of the nonpublic employment, and stands out as the single most important component of the reservation economy.[34]

Until the early 1980s, the Red Lake Indian Sawmills had served as a source of reservation income for more than 50 years, providing nearly one-third of the non-public employment on the reservation. The first steam-operated sawmill was constructed in Redby in 1924, its prosperity resting on the profitability of processing white pine and Norway pine. Since then the mill has been rebuilt and updated, but the availability of highly profitable pine has decreased, and Red Lakers have had difficulty maintaining profitable returns. As early as the 1930s, sawmill managers recognized their need to obtain timber from the open market rather than the reservation to keep the mill in operation.

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[34] Congressional Serial al Set; Annual Reports of the Commissioner of Indian Affairs 1917-1965; Walter Butler Company, Inc. Peat utilization and the Red Lake Indian Reservation, for the Minnesota Department of Natural Resources, Division of Minerals, requisition 13657 (St. Paul: Walter Butler Company, Inc.: 1978); Meyer, "The Red Lake Ojibwe": 258.

In the past, there had been some discussion of using swamp species. The mill closed in the early 1980s. That tribal members like the Bruns would come to rely more on the older tradition of individually acquiring tribal permission to sell tribal timber is only logical, given the state of the tribal timber industry in the 1980s.[35]

Wild rice is still harvested by the traditional canoe and flail method on the reservation, and tribal specialists have experimented with cultivated paddy operations using nonshattering strains of rice. Until the 1980s, wild rice held the most promise for agricultural development at Red Lake. Since then, however, commercial paddy operations in California have eclipsed Minnesota as the major producer of wild rice in the world. The heavy capital outlays required to establish wild rice paddies will make it increasingly difficult for the Red Lake Band to break into what once seemed the most lucrative agricultural enterprise for the reservation. The failure of this commercial avenue increases the Red Lake Band's dependence on the other three natural resources most important to their economic well-being.[36]

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[35] Congressional Serial Set 10761, 11897; Annual Reports of the Commissioner of Indian Affairs 1924-1965; Walter Butler Company, "Peat Utilization"; Elizabeth Irving, Interviews with Bud Anderson, Roger Anderson, Joe Day, Roger Jourdain, and Anthony Wilson, Transcripts in the possession of Melissa L. Meyer, 1989; Meyer, "The Red Lake Ojibwe": 258.

[36] Thomas Vennum, Jr., Wild Rice and the Ojibway People (St. Paul: Minnesota Historical Society Press, 1988); Stuart Berde, "Wild Ricing: The Transformation of an Aboriginal Subsistence Pattern," In J.A. Paredes, Anishinabe: Six Studies of Modern Chippewa (Tallahassee: University of Florida Press, 1980): 101-25; E.A. Oelke, et al., "Wild Rice Production in Minnesota," Agricultural Extension Service Bulletion 464 (St. Paul: University of Minnesota, 1982); E.H. Winchell and R.P. Dahl, "Wild Rice: Production, Prices, and Marketing," Agricultural Experiment Station, Miscellaneous Publication 29 (St. Pau: University of Minnesota, 1984); R.N.

Hunting represents much more than a cultural heritage to the Red Lake Band; it is crucial to their economic subsistence. Fish, moose, deer, and wild fowl still make up more than 50% of the Red Lake diet. These game resources contribute to the delicate subsistence balance on the reservation, providing food that enables Red Lake people to spend their meager cash income on other things.[37]

All of these tribal enterprises have contributed to a slowly developing economic self-sufficiency, but Red Lake employment statistics still look bleak. Economic conditions at Red Lake fall below the national average for Indians. The average unemployment rate approaches and seasonally surpasses 50%, and the average per capita income falls far below the poverty level. At the same time, the population of Red Lake is increasing faster than the average Indian population, bolstered by the return migration of Indians from nearby urban areas. The marginal Red Lake economy depends centrally on the nongovernmental employment afforded by fish, timber and other natural resources.[38]

Nelson and R.P. Dahl, "The Wild Rice Industry: Economic Analysis of Rapid Growth and Implications for Minnesota," Institute of Agriculture, Forestry, and Home Economics, Department of Agricultural and Applied Economics Staff Paper P86-25 (St. Paul: University of Minnesota, 1986); Walter Butler Company, "Peat Utilization": Meyer, "The Red Lake Ojibwe:" 258.

[37] Walter Butler Company, "Peat Utilization"; Meyer, "The Red Lake Ojibwe:" 258.

[38] Ibid.

Archaeological and historical research dovetail to establish that the components of an ancient way of life evolved by indigenous people in Minnesota's north country have persisted to leave a distinctive mark on contemporary Indian cultures.[39] The resources of the Red Lake Reservation ecosystem remain as central to the livelihood and well-being of the Indian people who live there today as they were to their ancestors. Of similar duration and longevity has been the Red Lake Band's successful commitment to maintaining their political sovereignty and their tribal system of communal resource ownership and usufruct allocation rights. In 1989, Tribal chairman Roger Jourdain continued in this tradition, saying, "The wildlife, timber, and fish are our greatest resource,...(the) primary source of employment and income for the Tribe." For the native people, the importance of the ecosystem and its resources to their way of life has remained unchanged.[40]

Conclusions

The above discussion should illustrate two fundamental points: 1) Since its earliest negotiations with U.S. officials, the Red

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[39] Mary K. Whelan, "The Archaeological and Ethnohistoric Evidence for Prehistoric Occupation," In The Patterned Peatlands of Minnesota, H.E. Wright, Jr., Barbara A. Coffin, and Norman E. Aaseng, eds. (Minneapolis: University of Minnesota Press, 1992): 239-49.

[40] Ibid .

Lake Band has clearly and consciously and successfully made decisions specifically to maintain its communally-held land base and its sovereign autonomy to make political and economic decisions in its best interests, and 2) Usufruct allocation of all resources held in common has characterized the Red Lake Band economy since earliest recorded history. For someone of my background and expertise, the Bruns' harvesting of tribal timber immediately seemed precisely in line with this generations' old tradition and right. It is no wonder that the Red Lake Band would press its right to allocate the right to harvest tribal timber to its members in the courts. And their efforts to do so are themselves part of a much longer pattern of the Red Lake Band's struggle successfully to preserve their political autonomy and sovereignty. I must hearken back to my earlier analogy. It is fair to say that no Red Lake leaders at any juncture of this struggle for sovereignty imagined that a recognition of Indian sovereignty would somehow be construed as bestowing a right to the United States government to tax the income of Tribal members derived from their harvest of Tribal resources. It is analogous to the United States demanding the right to tax French citizens who were allowed to harvest timber from French public lands.

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